

REMARKS/ARGUMENTS

Amendments in General
Claim Rejections - 35 U.S.C. § 112

1. Claims 2 and 22 of the application as filed have been canceled. As a result, the Examiner's rejection of these claims under 35 USC §112 and the Examiner's objections to the drawings for failing to describe this feature are no longer relevant and need not be further addressed.

2. New claims 24-28 have been added to the application. These claims each describe additional features of the preferred embodiment of the invention that is shown in the drawings and which is described in the application from the present invention. This amendment adds no new matter to the application and acceptance of this amendment is respectfully requested.

Claim Rejections - 35 USC § 102

3. The Examiner rejected claims 1-7, 9-14, 16-21 and 23 under §102(b) as being anticipated by Nance.

4. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d. 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 828 F.2d 1226,1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP § 2131.

5. The drain trap described in Nance is a device that, in use, is mounted directly to a sink. The drain trap comprises a body member 16 and a pipe insert 22 formed integrally with a strainer plate 13. The pipe/strainer plate 13, 22 are secured in position by means of a screw bolt 24. To clean the trap of Nance "it is merely necessary to release the bolt 24, and lift out the strainer plate 13 and pipe 22 whereby the entire interior of the receptacle 17 is accessible for cleaning" page 2, lines 64 to 69.

6. The drain trap of Nance does not include the feature recited in all of the independent claims of the present application that the insert is non-removably secured to the body (expressed as tamper proof in claim 20); once installed in the trap, the insert cannot be removed.

7. The Examiner appears to have taken the position that the presence of the screw bolt 24 to secure the pipe insert renders the insert 22 “non-removable.” However, this is clearly at odds with the teaching of Nance, which teaches that the insert, although it may be fixed in position by the bolt, is intended to be readily removable by a user.

8. As discussed in the present application at page 5, lines 8-14, non-removably securing the insert to the body prevents the undesirable situation of the bottle trap being tampered with and the insert being removed potentially leading to health and hygiene risks due to the trap failing to create a water seal in use.

9. From page 5, line 23 to line 6, page 2, the application discusses the tamper proof limitation of claim 20. Namely, that it is not possible to remove the insert from the body once assembled and secured without damaging the insert of the body. This ensures that the accidental installation of the trap without the insert is not possible.

10. On the contrary, this removable insert feature that is so highly described in the Nance reference is specifically excluded from the scope of the claims of the present invention.

11. In as much as the present invention includes features that are excluded from the prior art cited by the Examiner, the prior art cited by the Examiner cannot and does not anticipate upon the claims of the present invention as a matter of law.

Claim Rejections - 35 USC § 103

12. The Examiner rejected claims 8 and 15 under §103(a) as being unpatentable (obvious) in view of Nance, and in further view of Palmer and Carter.

13. “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant’s disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” MPEP § 706.02(j).

14. It is submitted that combining elements from different prior art references (in an attempt to establish obviousness) must be motivated or suggested by the prior art.

‘Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.’ [citation omitted] Although couched in terms of combined teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious “modification” of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

In re Fitch, 972 F.2d 1260, 23 USPQ2d 1780, 1783-4 (Fed.Cir. 1992), (in part quoting from *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).

15. The prior art cited by the Examiner completely fails to teach all of the features of the invention that is set forth in claims 8 and 15 of the present application.

16. The present invention requires the presence of this gas seal and provides a permanently connected and tamper-proof connection. This provides a significantly safer device than the device that is taught or shown in the Nance device. Once the trap of Nance is dismantled, one can easily imagine a situation where the trap is not immediately replaced or is replaced incorrectly, allowing possibly poisonous gasses to pass from a soil pipe system or sewage pipe system into a building with potentially dangerous consequences.

17. The Nance patent does not teach a device where the insert is non-removably connected to the waste trap. Rather, the Nance device teaches a device where the insert is configured to be removed so as to allow for cleaning.

18. Neither the Carter nor the Palmer references, either alone or in combination, teaches the presence of a non-removable insert. Furthermore, neither Carter nor Palmer teaches the combination that is claimed in the present invention.

19. The Examiner has maintained that the invention claimed in the present application is merely an obvious modification that would be made by an ordinary artisan. However, the Examiner does not make or demonstrate any information that would support this statement or position.

20. The Examiner must prove motivation to modify the prior art. *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998) (describing “teaching or suggestion or motivation [to combine]” as an “essential evidentiary component of an obviousness holding”), see also *In re Rouffet*, 149 F.3d 1350, 1359 (Fed. Cir. 1998) (“the Board must identify specifically...the reasons one of ordinary skill in the art would have been motivated to select the references and combine them”).

21. This objective evidence must provide motivation to modify the prior art.

We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, although “the suggestion more often comes from the teachings of the pertinent references ...” The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusionary statements regarding the teaching of multiple references, standing alone, are not “evidence.”

In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999).

22. The Examiner has not shown any evidence that would support his claim that the Applicant’s invention is merely an obvious modification over the prior art. Therefore, the Applicant respectfully asserts that a prima facie case of obviousness has not been met.

23. The Applicant therefore respectfully requests that the Examiner’s rejection be withdrawn and that the Applicant’s claim be allowed to pass on for allowance.

New Claims 24, 25, 26, 27 and 28

24. New claims 24-28 introduce the feature that the inlet and the outlet are both adapted to be connected to a pipe. The presence of these features further distinguishes this invention over the prior art because the prior art fails to teach this feature as well.

Conclusion

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 21st day of September 2004.

Very respectfully,




DEREK H. MAUGHAN
Reg. No. 52,007
(208) 345-1122

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service on the below date as first class mail in an envelope addressed to:

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

DATE: September 21, 2004



Amber R. Smith